

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Arthur Ginsberg, et al.

v.

Civil No. 05-cv-193-JM

Kelly A. Ayotte, in her official
capacity as Attorney General of
the State of New Hampshire


O R D E R

Plaintiff Arthur Ginsberg has filed a First Amended Complaint in the above-captioned action (document no. 13) as he is entitled to do once as a matter of course before a responsive pleading is filed pursuant to Fed. R. Civ. P. 15(a). Prior to the filing of the amended complaint, the Defendant filed a motion to dismiss, but a motion to dismiss is not considered to constitute a responsive pleading within the meaning of the rule. See McDonald v. Hall, 579 F.2d 120, 121 (1st Cir. 1978).

The First Amendment Complaint presents several new factual allegations that were not included in the original complaint, and which were not addressed in the Defendant's pending motion to dismiss. Therefore, Defendant's motion to dismiss (document no. 5) is denied without prejudice. If she chooses, the Defendant

may re-file her motion to dismiss addressing the allegations and claims presented in the First Amended Complaint. Since the Court denies Defendant's motion to dismiss, Plaintiff's motion to strike nonconforming filing (document no. 10) is moot.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: October 6, 2005

cc: Jill Dinneen, Esq.
Wynn E. Arnold, Esq.